

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAURA THOMPSON, etc.,

Plaintiff,

vs.

HOMEcomings FINANCIAL, LLC,

Defendants.

Case No.: C 07 4046 PJH

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION TO DISMISS
PURSUANT TO F.R.C.P. 12(b)(6) AND
TO STRIKE PURSUANT TO F.R.C.P.
12(F) PORTIONS OF THE FIRST
AMENDED COMPLAINT**

Hearing Date: January 9, 2008
Time: 9:00 a.m.
Courtroom: 3
Judge: Hon. Phyllis J. Hamilton
Complaint Date: August 7, 2007
Trial Date: Not Set

This Motion of Defendant HOMEcomings FINANCIAL, LLC, (hereafter, "Defendant"), seeking dismissal pursuant to FRCP 12(b)(6) and to strike portions of the first amended complaint pursuant to FRCP 12(f), having been duly noticed and served on all interested parties, came on regularly for hearing before this Court, the Honorable Phyllis J. Hamilton presiding, at 9:00 a.m. on January 9, 2008.

All arguments, papers and evidence considered and good cause appearing, Defendant's Motion to Dismiss and to Strike portions of the first amended complaint is GRANTED as follows:

1 1. Pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the second cause of action of
2 plaintiffs' first amended complaint on the grounds that

3 a. The California Consumers Legal Remedies Act (Civ. Code, §1750 et seq.)
4 does not apply to transactions, such as those alleged in the complaint, involving only the
5 extension of credit; and

6 b. Plaintiff has not alleged facts showing a violation of the Consumers Legal
7 Remedies Act's specific prohibitions.

8 2. Pursuant to Fed. R. Civ. P. 12(f) to strike paragraphs 1 and 4 of the first amended
9 complaint's prayer. Those paragraphs seek compensatory, statutory, and punitive damages, relief
10 that is not available under California Business and Professions Code § 17200 et seq. or §17500 et
11 seq., and which plaintiff cannot recover under the Consumers Legal Remedies Act for the reasons
12 mentioned in the accompanying motion to dismiss.

13 IT IS SO ORDERED.

14 DATED: _____

Phyllis J. Hamilton
United States District Court Judge